

Conservation Commission
Work Session
Draft Minutes
May 17, 2016

Present:

Barbara Renaud, Chairman
Jay Diener, Vice Chairman
Peter Tilton, Jr.
Pat Swank
Gordon Vinther
Toni Ciolfi, Alternate (7:10 pm)
Nathan Page, Alternate

Also Present:

Rayann Dionne – Conservation Coordinator
Mark Gearreald – Town Attorney

I) Call to Order

The Hampton Conservation Commission work session was called to order by Ms. Renaud at 7:02 p.m. in the upstairs conference room at Town Hall.

II) Work Session – Discuss steps for amending/terminating a termed conservation easement and mitigation options

Ms. Renaud shared with the Commission that there are two major items to discuss this evening. The first is to provide the Commission with a general understanding of the steps involved in amending/terminating a termed conservation easement as described by the Charitable Trust Guidelines. Attorney Gearreald is also present tonight to help answer any additional questions that might arise over this topic. The second topic is to discuss mitigation that is currently being offered to cover the impacts associated with the wetland and buffer impacts at 299 Exeter Rd (hotel and office building) and compensation for the early termination of the 50 year (only 6 years remain of the 50) conservation easement at 298 Exeter Rd. One mitigation/compensation proposal is being offered to cover this two separate issues/impacts.

Ms. Renaud continued by sharing that the Conservation Commission must weigh the mitigation/compensation being offered for the termed easement using the 7 principles outlined in the Charitable Trust Guidelines.

1. Clearly serve the public interest and be consistent with the easement holder's mission.
2. Comply with all applicable federal, state, and local laws.
3. Not jeopardize the holder's tax exempt status or status as a charitable organization under either federal or state law (if the holder is a land trust or other charitable organization)
4. No result in "private inurement" or confer impermissible "private benefit" (as those terms are defined for federal tax law purposes and N.H. RSA 7:19-a)

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5. Be consistent with the conservation purpose(s) and intent of the easement.
6. Be consistent with documented intent of the donor, grantor, and any direct funding source.
7. Have a net benefit or neutral effect on the relevant conservation values or attributes protected by the easement.

It was recognized by all members present that giving up/releasing an easement is a very unusual request and not one the Commission has faced before. Mr. Diener noted this is the first conservation easement in Hampton that they have seen that is only for a set number of years as opposed to in perpetuity. It's very important that if the Commission were to choose to support this early release that the mitigation/compensation is a substantial gain/benefit to the Town. Ms. Renaud also stated that if the Commission should decide to support the early release then the Board of Selectmen have to review and approve it. If the Board of Selectmen approve of it, then Attorney Gearreald is authorized to prepare the necessary documents for submittal to probate court, which will make the final decision.

Mrs. Swank asked is the wetland and buffer impacts associated with the healthcare facility proposed at 298 Exeter Rd are part of this discussion. Ms. Renaud clarified that those impacts have already been addressed and the agreed upon mitigation was the deeding of parcel Map 66 Lot 1 to the Town of Hampton, care of the Conservation Commission.

Mr. Ciolfi asked how common termed conservation easements are. Mr. Diener shared that based on his conservation with other local conservation commissions and the interim director of the NH Associations of Conservation Commissions, it is quite rare.

Mr. Vinther asked whether the Commission should be viewing a termed easement different from one that's in perpetuity. It didn't seem like the Commission would even entertain the idea of amending on that was in perpetuity. There was a consensus that if it was in perpetuity it an early termination wouldn't be considered. Ms. Renaud commented that the Department of Justice (co-author of the Charitable Trust Guidelines) treats/views both types the same.

Mr. Diener read to the Commission a letter dated May 4th from Joe Valley of Asset Title in which a mitigation offer of deeding over parcel Map 66 Lot 3 to cover/mitigate the early release of the 50 year easement, wetland and buffer impacts at 299 Exeter Rd, plus future potential wetland impacts in Liberty Lane. Mr. Diener explained to the Commission the mitigation calculations that he and Ms. Dionne performed using the Commission's recently adopted Mitigation Guidelines. Mr. Diener and Mrs. Dionne took slightly different mathematical approaches but their results were almost identical. They both focused only on the impacts 299 Exeter Rd, because those are the only ones that currently quantified. The selected mitigation ratios were the mid-range in the guidelines, wetlands impacts were mitigated with wetlands and buffer impacts were mitigation with buffer. It was determined that Map 66 Lot 3 could accommodate the wetland and buffer impacts for the hotel site with 2 acres of uplands

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remaining/still available for mitigation. The 50-year termed easement at 298 Exeter is approximately 2 acres in size. This means that Map 66 Lot 3 only provides 1:1 mitigation ratio (1 acre impacts to 1 acre preserved). The Commission has to decide whether or not a 1:1 mitigation/compensation ratio for the early release of the easement is reasonable and would satisfy the Charitable Trust criteria.

There was a lengthy discussion on whether a 1:1 ration was reasonable. The consensus of the Commission was that it was not sufficient and at a minimum they would like the ratio to be 1:2 (1 acre impact to 2 acres preserved). Ms. Shaw stated that the property owner is asking us to essentially break a contract and mitigation/compensation ration of 1:1 doesn't seem fair. The members present feel the Commission works very hard to preserved open space and wildlife habitat in Hampton and greatly appreciates those residents who have supported us in that mission and donated or sell land to the Town for that purpose. The Commission does not want to jeopardize that relationship or its reputation.

The Commission also agreed that the original grantors of the easement and/or their heirs should be contacted to determine whether they are open to the idea of an early release.

Mr. Renaud shared with the Commission the Town Manager's idea of a dry hydrant installation at the Car Barn Pond as part of this mitigation/compensation negotiation. The westside of Hampton is not serviced by Aquarion Water Company so there are no fire hydrants and rely on tanker trucks or other waterbodies, if available. The Commission did not see any issues with installing a dry hydrant but were not comfortable making it part of their review because it's not a land preservation or habitat enhancement/restoration activity. There was also no estimated cost for such a device. Since this agreement also requires Board of Selectmen approval, Commission members felt it would be more appropriate to be handle it at their level.

Mr. Diener summarized the options available to the Commission which would be 1) to accept Map 66 Lot 3 as mitigation/compensation as the owners have proposed in the May 4th letter, 2) accept Map 66 Lot 1 with some additional land, enhancement, or restoration, or 3) reject the Map 66 Lot 3 mitigation proposal.

The Commission would be reviewing the full proposal from the applicants and making a decision at the May 24th meeting.

III) Adjourn

MOTION: Mr. Diener made the motion to adjourn at 8:46 p.m.

SECONDED: Mrs. Swank

FAVOR: 7 in favor, 0 opposed

MOTION PASSED